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**OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE**

**COUNCIL ON ENVIRONMENTAL QUALITY**

**Guidelines for Implementation of Executive Order 13141: Environmental Review of Trade Agreements**

**AGENCY:** Office of the United States Trade Representative and Council on Environmental Quality

**ACTION:** Guidelines for Implementation of Executive Order 13141—*Environmental Review of Trade Agreements*: Final

**SUMMARY:** On November 16, 1999, President Clinton signed Executive Order 13141. 64 Fed. Reg. 63169 (Nov. 18, 1999). The Order makes explicit the United States' commitment to a policy of careful assessment and consideration of the environmental impacts of trade agreements, including, in certain instances, written environmental reviews. The Order directs the Office of the United States Trade Representative (USTR) and the Council on Environmental Quality (CEQ) to oversee implementation of the Order, including the development of procedures pursuant to the Order.

The procedures called for by the Executive Order (the Guidelines) are published below. USTR and CEQ developed the Guidelines through an extensive public process and consultations with appropriate foreign policy, environmental, and economic agencies and Congress. USTR and CEQ have carefully taken public views into account in finalizing the Guidelines, and the final Guidelines endeavor to reflect many of them.

**FOR FURTHER INFORMATION CONTACT:** Office of the U.S. Trade Representative, Environment and Natural Resources Section, telephone 202-395-7320, or Council on Environmental Quality, telephone 202-456-6224.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

Executive Order 13141 builds on U.S. experience with written environmental reviews of previous trade agreements, including the North American Free Trade Agreement (1991-92 and 1993), the Uruguay Round Agreements (1994), and the proposed Accelerated Tariff Liberalization initiative with respect to forest products (1999). The Order institutionalizes the use of environmental reviews as an important tool to help identify potential positive and negative environmental effects of certain major trade agreements, and to facilitate consideration of appropriate responses where effects are identified. Pursuant to the Order, environmental reviews, along with a process of ongoing assessment and

evaluation, should help shape trade agreements that contribute to the broader goal of sustainable development. The Order is available on USTR's internet web site at [www.ustr.gov](http://www.ustr.gov).

USTR and CEQ developed the Guidelines called for by the Order in consultation with interested agencies on the Trade Policy Staff Committee (TPSC), including the Departments of Agriculture, Commerce, Energy, Interior, Justice, State, Treasury and Transportation, the U.S. Environmental Protection Agency, and the U.S. Agency for International Development. The TPSC, established under section 242 of the Trade Expansion Act of 1962, as amended (19 U.S.C. section 1872), is the principal staff-level mechanism for interagency decisionmaking on U.S. trade policy. The current participants in the TPSC process for purposes of the Guidelines include agencies with relevant environmental, economic and foreign policy expertise. See Guidelines, Appendix A.<sup>1</sup>

As part of the process for developing the Guidelines, USTR and CEQ sought to involve interested members of the public at significant stages. At the outset, USTR and CEQ requested public comment concerning issues the agencies should consider in developing the guidelines, and received twenty-two

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<sup>1</sup>The basic work of the TPSC is performed by a network of staff-level subcommittees and task forces, organized by geographical region and/or sector. The committees prepare recommendations on subjects within their purview (e.g., instructions to negotiators on specific issues relevant to a given trade agreement). These recommendations take the form of a paper, which must then be cleared by agencies on the TPSC.

sets of written comments. 65 Fed. Reg. 9757 (Feb. 22, 2000). USTR and CEQ also requested comment on draft guidelines published in July, 2000, and received twenty-five sets of written comments. 65 Fed. Reg. 42,743 (July 11, 2000). Eight individuals and organizations presented testimony with regard to the draft guidelines at the August 2 public hearing. All written comments and a transcript of the hearing are available for public inspection in USTR's reading room located at 600 17th Street N.W., Washington, D.C. 20508.

USTR and CEQ also consulted extensively with the Trade and Environmental Policy Advisory Committee (TEPAC), as well as other interested advisory committees. TEPAC is part of the trade advisory committee system established by Congress to provide private sector information and advice on the priorities and direction of U.S. trade policy. TEPAC sponsored several workshops on the Guidelines for TEPAC members and other participants, which were open to the public. USTR, CEQ, and other interested agencies participated in the public workshops. TEPAC also submitted a divided recommendation prior to publication of the draft Guidelines, and USTR and CEQ consulted informally with interested TEPAC members throughout the development of the Guidelines.

In addition, USTR and CEQ drew upon agencies' experience gained to date in implementing the Executive Order in the review of the Jordan Free Trade Agreement negotiations, see 65 Fed. Reg. 58,342 (September 28, 2000), and in planning for the review of the Free Trade Area of the Americas negotiations. See 65 Fed. Reg. 75,763 (Dec. 4, 2000).

## **B. Public Comments**

The views of the public played a significant role in shaping the final Guidelines. USTR and CEQ benefitted from numerous constructive comments provided by the public in written comments and at the August 2, 2000 hearing. Public views reflected many different perspectives, including those of environmental organizations, industry, and agriculture.

Public comments generally supported the overall goals of the Executive Order and Guidelines, and noted that the draft Guidelines represented a significant step forward toward achieving those goals. However, a number of commenters expressed concern that the draft Guidelines were insufficiently specific concerning how environmental considerations would actually be integrated into the development of U.S. trade negotiating objectives. Some of these commenters also advocated more robust consideration of alternatives than provided for in the draft Guidelines. Some commenters also favored more explicit provision for engaging the public early in the negotiating process to allow for a meaningful public role in shaping overall trade objectives and negotiating positions. In particular, these commenters emphasized that early public engagement would assist in identifying “win-win” opportunities where the opening of markets and reduction or elimination of subsidies may yield environmental benefits.

From another perspective, other commenters were concerned that the process outlined in the draft

Guidelines was too prescriptive and inflexible, and could thus hamper trade negotiators. A number of commenters emphasized the need to ensure that reviews would be based on an objective, impartial analysis of environmental effects and sound scientific principles. They requested that the final Guidelines clarify that positive as well as negative impacts would be considered, and stressed that all government agencies with relevant expertise and all interested advisory committees should be involved in the reviews.

Commenters differed concerning the degree to which reviews should address global and transboundary environmental impacts. Several commenters favored creating a presumption in favor of reviewing such effects, while others argued that the reviews should normally be limited to impacts within the United States.

Several commenters requested that the final Guidelines provide for greater transparency in the negotiation process, including the release of draft negotiating texts. While acknowledging that confidentiality for some aspects of the negotiation might be appropriate, these commenters argued that non-disclosure should be kept to a minimum, and that cleared advisors should be used where confidentiality was unavoidable.

Concerning agency roles, a number of commenters contended that CEQ and environmental agencies should have a more prominent role in conducting the reviews, while others argued that their role should be less prominent. Several commenters criticized the way in which governmental resource constraints

were reflected in the draft Guidelines and urged that reviews should not be conditioned on the availability of resources.

Finally, several commenters pointed out that the draft Guidelines omitted reference to possible implications of trade agreements for state and local (as well as federal) environmental regulatory authorities.

### **C. Principal Revisions to the Draft Guidelines**

The final Guidelines have strengthened and clarified provisions pertaining to early and proactive integration of environmental and trade policy objectives. Specifically, Sections I and II of the Guidelines expressly acknowledge that the written environmental review process is not the sole means of integrating environmental concerns and goals into a proposed trade agreement, and make clear that public input will be sought even where no written environmental review is conducted (Section II.7).

The final Guidelines also clarify that informal public outreach and consultations shall take place at an early stage in the review process, and that information received at this stage will be used to inform the development of U.S. negotiating objectives and positions (Section III, A and B).

The final Guidelines provide further clarification that reviews will consider positive as well as negative potential impacts of trade agreements (see, e.g., Section IV.B.2, and Appendix C) and that analysis will be objective and scientific (Section V.A.2). Objectivity and balance in the reviews are further

advanced through the active involvement of a broad range of government agencies (Section VIII.A.5) and relevant advisory committees (see, e.g., Sections VI.6 and IV.4). The final Guidelines also provide clarifications regarding possible state, local, and tribal governmental regulatory issues (Sections IV.B.2.b, V.B.1 and Appendix C).

The final Guidelines make explicit (in a new Section IV.C) that the extent of the analysis shall be proportionate to the significance of anticipated environmental impacts. Where initial steps in the review process indicate that environmental impacts are likely to be *de minimis*, it will normally be appropriate to abbreviate the analysis.

Concerning global and transboundary impacts, the final Guidelines provide some additional clarification to ensure that potential global and transboundary impacts are appropriately identified in the scoping process (Section V.B.5). However, the general approach of the draft Guidelines has been retained in conformity with the Executive Order, which provides that the focus of the review should be on impacts in the United States, and examination of global and transboundary impacts may be included as appropriate and prudent.

The final Guidelines include a new provision concerning transparency and confidentiality in the review process (Section VI.6). This is a difficult and complex issue, which has implications beyond the scope of the Order and the Guidelines. The United States believes that transparency and openness are vital to ensuring public understanding and support for international trade policy, and is at the forefront of efforts



to improve transparency in the world trading system. The United States is also committed to keeping the public informed about trade negotiations and engaging in regular dialogue with interested stakeholders. However, disclosure of certain information to foreign governments could compromise the ability of trade negotiators to obtain the best outcome for national interest. Therefore, it is important to maintain a degree of confidentiality concerning development of U.S. negotiating objectives and positions and the conduct of negotiations.

The final Guidelines endeavor to strike a balance between these goals. They state that sufficient information shall be provided to the public to facilitate understanding and involvement in a meaningful manner concerning U.S. negotiating objectives and the environmental review process. However, to the extent that disclosure would impair the United States' ability to develop negotiating objectives or conduct negotiations, or would compromise proprietary or confidential information, issues shall be addressed, where appropriate, through the advisory committee system of cleared advisors.

The final Guidelines make clear that CEQ and USTR shall jointly oversee the implementation of the Executive Order, including the Guidelines, and consult at the outset of each review (Section VIII.A.1, 5). The final Guidelines also modify references to the role of governmental resources (for example, the specific reference to resources in connection with consideration of global and transboundary effects is deleted, see Section V.B.5). However, because adequate resources are critical to the effective implementation of the Order and Guidelines, several provisions address the resource issue (Sections II.5, VIII.A.2 and 6). Additional language clarifies that agencies shall seek adequate resources to carry

out their responsibilities within their planning budgets (Section VIII.A.6).

Finally, the Guidelines are intended to be a living document. CEQ and USTR retain the ability to revise the Guidelines, in consultation with other agencies, advisory committees and the public, as experience is gained with applying them to particular reviews (Section VIII.B.1). If CEQ and USTR conclude that revision is appropriate, the public shall be notified of the intent to revise and be given an opportunity to comment on significant revisions.

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